IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 2309 of 2002

Emami Limited ... Plaintiff

versus

Goodwill Enterprises & ors. ....Defendants

...

Mr.H.V. Chande for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 12th January 2005.

P.C.:

1. Heard Mr. Chande for the plaintiff. None for the defendant.

2. The plaintiff has filed this suit for recovery of the price of the goods sold and delivered to the defendant. By an order dated 8th January 2004 in Summons for Judgement 840 of 2002, this Court granted conditional leave to the defendants to defend the suit subject to the condition that the defendants deposited a sum of Rs.3,00,000/- within a period of 8

weeks. An appeal bearing no.165/04 passed against the said order was dismissed by a Division Bench of this Court by an order dated 8th march 2004. However, time for deposit was extended by three months i.e. upto 8th June 2004. Despite the same, the defendants have not deposited the said sum and the plaintiff has produced on record a certificate of non deposit dated 15th September 2004 issued by Master and Asstt. Prothonotary. In view of the non deposit of the money and failure of the defendants to comply with the terms on which conditional leave was granted, the matter is listed for hearing under Rule 224 of the Bombay High Court (Original Side) Rules. In view of the non-deposit and non compliance of the condition of the conditional leave, the plaintiff is entitled to a decree under clause (b) of sub rule (6) of Rule (3) of Order 37 of the Code of Civil Procedure.

3. The plaintiff has filed on record the original documents. The documents are taken on record and collectively marked Exhibit 'A'. The documents disclose that the plaintiff supplied to the defendants goods totally valued at Rs.5,27,004/-. The defendants do not dispute the receipt of the goods or their quality of condition of the goods.

The defendants however sought to adjust certain claims against the money due. There was a meeting between the parties on 12th March 2001 wherein the defendants agreed to pay a consolidated sum of Rs.3,60,000/-. This was agreed after deducting the claims of the defendants. The original writing is produced on record. The plaintiff has also signed the said writing. In view of the said writing, the plaintiff is not entitled to recover a sum of Rs.5,27,004 as claimed by it but is entitled to claim only a sum of Rs.3,60,000/-. There is no defence available to the defendants regarding this sum of Rs.3,60,000/-. Hence, plaintiff is entitled to interest thereon from 22nd March 2001 by which date the defendants had agreed to make the payment. Hence, I pass the following order:-

O R D E R

4. The defendants shall pay to the plaintiff a sum of Rs.3,60,000/- together with interest thereon at the rate of 12% p.a. from 22nd March 2001 till the date of the suit and further interest thereon @ 12% p.a. from the date of the suit till payment and all costs of the suit.

D.G. KARNIK, J